



Site Deletion from the National Priorities List

BACKGROUND: Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended by the Superfund Amendments and Reauthorization Act (SARA) of 1986, requires the U.S. Environmental Protection Agency (EPA) to maintain a National Priorities List (NPL) of releases or potential releases of hazardous substances, pollutants, or contaminants that warrant further investigation to determine if they pose risks to human health and the environment. Typically a site is placed on the NPL based on its score derived by applying the Hazard Ranking System (HRS), a screening mechanism EPA uses to evaluate the relative threat to human health and the environment posed by the release, or potential release, of hazardous substances into the environment. Sites scoring 28.50 or greater are eligible for the NPL. Additionally, each state may designate one top-priority site, regardless of the HRS score. Infrequently, EPA may utilize provisions established under 40 CFR 300.425(c)(3) to place a site on the NPL. A site may be deleted from the NPL if it is determined that no further response is required to protect human health and the environment. To date, EPA has deleted 51 sites from the NPL. The criteria and procedures for deleting a site from the NPL, as established by the National Oil and Hazardous Substances Pollution Contingency Plan, otherwise known as the National Contingency Plan (NCP), and other relevant policies are the subject of this Information Brief.

STATUTES: Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980 as amended by the Superfund Amendments and Reauthorization Act (SARA) of 1986.

REGULATIONS: 40 CFR Part 300, National Oil and Hazardous Substances Pollution Contingency Plan (Revisions in 55 FR 8666, March 8, 1990).

REFERENCES:

1. *Executive Order 12580: Superfund Implementation*, EH-231 CERCLA Information Brief, EH-231-015/0593, May 1993.
2. *Procedures for Completion and Deletion of National Priorities List Sites*, OSWER Directive 9320.2-3A,B, and C, U.S. Environmental Protection Agency, April 1989, December 29, 1989, and February 19, 1992.
3. Final Rule, 57 FR 47180, October 14, 1992, "National Priorities List for Uncontrolled Hazardous Waste Sites."
4. Notice of Policy Change, 56 FR 66601, December 24, 1991, "National Oil and Hazardous Substances Pollution Contingency Plan; Deletion of Sites From the National Priorities List; Five-Year Reviews."

Are DOE and other Federal facility sites subject to listing on the NPL?

DOE and other Federal facility sites that meet the eligibility criteria in 40 CFR 300.425(c), (e.g., an HRS score of 28.50 or greater) are subject to listing on the NPL. Federal facilities differ from other facilities in two basic areas:

- ☐ A Federal facility may be included on the NPL even if the facility also is subject to the corrective action authorities of RCRA Subtitle C (March 13, 1989, 54 FR 10520); and
- ☐ Federal facilities are not eligible for fund-financed remedial actions [40 CFR 300.425(b)(3)].

What are the criteria for deletion from the NPL?

EPA will delete a site from the NPL when no further response is required to protect human health and the environment, as provided in the NCP at 40 CFR 300.425(e). The NCP establishes the following criteria for deletion:

- ☐ Responsible parties or other persons have implemented all appropriate response actions required;

- ☐ all appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or
- ☐ the remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking remedial measures is not appropriate.

A site may be deleted from the NPL when final Record of Decision (ROD) requirements are attained (i.e., the remedial objectives have been met) and the site is operational and functional. Justification for deletion is contained in the Close Out Report.

What is a Close Out Report?

The Close Out Report (COR), prepared by the DOE Environmental Restoration Project Manager (ERPM) provides a brief technical demonstration of how the implemented remedy at the site satisfies the completion requirement. The report includes a summary of site conditions, demonstration of quality assurance/quality control from cleanup activities, monitoring results, summary of operation and maintenance, a section on protectiveness, and a bibliography. The COR provides the

overall technical justification for site completion. Approval of a final COR by the EPA Regional Administrator signifies site completion and that, when necessary, the site has entered its operation and maintenance phase. No site may be deleted from the NPL without an approved COR.

What are the steps in the site deletion process?

The site deletion process may begin upon approval of the COR by the EPA Regional Administrator. The deletion process is divided into three steps [40 CFR 300.425(e)]:

- ❑ Initiation of the process during which the lead agency compiles the deletion docket material and prepares the *Notice of Intent to Delete* for EPA headquarters review and EPA Regional Administrator approval. The state will be provided 30 working days to review the *Notice of Intent to Delete* and provide a letter of concurrence prior to publication in the *Federal Register*. No site may be deleted from the NPL without state concurrence.
- ❑ Publication of the *Notice of Intent to Delete* in the *Federal Register* with a 30 calendar day public comment period. In addition, a notice of availability announcing the *Notice of Intent to Delete* must be published in a local newspaper in general circulation at or near the release proposed for deletion. Copies of all supporting documents will be placed in the information repository described in 40 CFR 300.430(c)(2)(iii) and made available for public inspection and copying.
- ❑ Preparation of responses to all significant comments and inclusion of all new data in the response document. Publication of the *Notice of Deletion* in the *Federal Register*. Placement of the final information package in the local repository.

Are five-year reviews required for all sites prior to deletion from the NPL?

CERCLA Section 121(c) mandates that EPA review the remedial action taken at certain sites (i.e., those sites at which a remedial action results in a hazardous substance, pollutant, or contaminant remaining at the site) “no less often than each five years after initiation of such action to ensure that human health and the environment are being protected” Although this review was created as a separate requirement from the deletion process, EPA established a policy requiring that at least one five-year review be conducted after completion of the remedial action prior to deleting sites from the NPL. In a December 24, 1991, policy statement, EPA reversed this policy by announcing that it would no longer defer deletion of sites pending completion of a five-year review. EPA determined that tying the two independent processes (i.e., NPL site deletion and the five-year review) was unnecessary and potentially confusing. EPA stated that “since section 121(c) makes no reference to either the NPL or to deletion from it, sites requiring a five-year review must have that review regardless of whether they are still on the NPL.”

What is the Construction Completion List, and how does it relate to site deletion?

The Construction Completion List (CCL) is a periodically published compilation of sites presently or

formerly on the NPL. The CCL is not a rulemaking and does not have any legal significance, but serves as a mechanism for communicating Superfund progress to the public. Sites qualify for the CCL when:

- ❑ any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved;
- ❑ EPA has determined that the response action should be limited to measures that do not involve construction (e.g., institutional controls); or
- ❑ the site qualifies for deletion from the NPL.

Sites that have been deleted from the NPL are included on the CCL, with the year of deletion noted. However, deleted sites will not qualify for the CCL if physical construction remains to be conducted under another statutory authority. Long-Term Remedial Actions (LTRAs), those actions requiring a continuous period of on-site activity before cleanup levels are achieved, are also denoted on the CCL. Each site on the CCL has a preliminary, interim, or final COR; a ROD requiring no further construction; or documentation showing deletion from the NPL. On March 2, 1993, EPA published a list of 155 sites that have been placed on the CCL (58 *FR* 12142).

What activities continue once a site has been deleted from the NPL?

CERCLA activities do not cease upon deletion of a site from the NPL. Operation and Maintenance (O&M) measures (i.e., measures necessary to maintain the effectiveness of remedial response actions), and other actions specified in the ROD, order, or agreement (e.g., monitoring, reporting, etc.), often continue beyond site deletion. O&M measures are initiated after achieving the remedial action objectives and remediation goals in the ROD, and the remedy is determined to be operational and functional [except for ground and surface water restoration actions covered under 40 CFR 300.435(f)(3)]. As mentioned previously, five-year reviews may also be undertaken following site deletion.

Once a site is deleted, can it be placed back on the NPL?

Where there is a “significant release” at a deleted site, the site may be restored to the NPL without application of the HRS [40 CFR 300.425(e)(3)]. Deletion does not preclude future performance of CERCLA response actions deemed necessary; affect responsible party liability or future enforcement actions; or impede EPA efforts to recover costs associated with response actions.

Questions of policy or questions requiring policy decisions will not be dealt with in EH-231 Information Briefs unless that policy has already been established through appropriate documentation. Please refer any questions concerning the subject material covered in this Information Brief to Beverly Whitehead, RCRA/CERCLA Division, EH-231, 202-586-6073.

